

Translation

PATENT COOPERATION TREATY

PCT/JP2003/008094



PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

| | | |
|--|---|---|
| Applicant's or agent's file reference 4993 | FOR FURTHER ACTION See Form PCT/IPEA/416 | |
| International application No. PCT/JP2003/008094 | International filing date (day/month/year) 26 June 2003 (26.06.2003) | Priority date (day/month/year) 26 June 2002 (26.06.2002) |
| International Patent Classification (IPC) or national classification and IPC A61K 35/74, A61P 11/02, 11/06, 17/00, 37/08, 43/00 | | |
| Applicant CALPIS CO., LTD. | | |

- This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 6 sheets, including this cover sheet.
- This report is also accompanied by ANNEXES, comprising:
 - ☒ (sent to the applicant and to the International Bureau) a total of 4 sheets, as follows:
 - ☒ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
- This report contains indications relating to the following items:
 - ☒ Box No. I Basis of the report
 - ☐ Box No. II Priority
 - ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☐ Box No. IV Lack of unity of invention
 - ☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Box No. VI Certain documents cited
 - ☐ Box No. VII Certain defects in the international application
 - ☐ Box No. VIII Certain observations on the international application

| | |
|--|---|
| Date of submission of the demand 20 January 2004 (20.01.2004) | Date of completion of this report 07 September 2004 (07.09.2004) |
| Name and mailing address of the IPEA/JP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2003/008094

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language _____, which is language of a translation furnished for the purpose of:
- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☐ The international application as originally filed/furnished
- ☒ the description:
- pages _____ 1-13 _____, as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- pages _____ 1-12 _____, as originally filed/furnished
- pages* _____, as amended (together with any statement) under Article 19
- pages* _____ 13-19 _____ received by this Authority on 09 August 2004 (09.08.2004)
- pages* _____ received by this Authority on _____
- ☒ the drawings:
- pages _____ 1-3, 5, 6 _____, as originally filed/furnished
- pages* _____ 4 _____ received by this Authority on 09 August 2004 (09.08.2004)
- pages* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2003/008094

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application.

☒ claims Nos. 9-12

because:

☐ the said international application, or the said claims Nos. 9-12 relate to the following subject matter which does not require an international preliminary examination (*specify*):

See supplemental sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

☒ the claims, or said claims Nos. 9-12 are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. _____.

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ see Supplemental Box for further details.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/03/08094

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: III. 1.

The subject matter of claims 9 to 12 relates to methods for treatment of the human body by therapy. Thus, this International Preliminary Examining Authority is not required to carry out international preliminary examination on this subject matter under the provisions of PCT Article 34(4)(a)(i) and PCT Rule 67.1(iv).

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

| | | | |
|-------------------------------|--------|-----------------|-----|
| Novelty (N) | Claims | 2-4, 6-8, 13-19 | YES |
| | Claims | 1, 5 | NO |
| Inventive step (IS) | Claims | 2-4, 6-8, 13-19 | YES |
| | Claims | 1, 5 | NO |
| Industrial applicability (IA) | Claims | 1-8, 13-19 | YES |
| | Claims | | NO |

2. Citations and explanations

Document 1: WO 01/37865 A1 (Probiall Pty Limited), 31 May 2001

Document 2: DE 20202562 U1 (Orthomol Pharmazeutische Vertriebs GmbH), 23 May 2002

Document 3: WO 95/14485 A1 (Taketoshi Yamada), 1 June 1995

Document 4: JP 9-2959 A (Yakult Honsha Co., Ltd.), 7 January 1997

Document 5: JP 2000-86524 (Shadan Seirankai), 28 March 2000

Claims 1 and 5

Claims 1 and 5 relate to an antiallergenic agent containing *Lactobacillus acidophilus* and *Lactobacillus fermentum* as active ingredients, and document 1 (abstract; claims), document 2 (Zusammenfassung; Schutzanspreche; page 1, lines 1 to 9), document 3 (abstract; claims), document 4 (abstract; claims) and document 5 (abstract; claims; paragraph [0008]) set forth antiallergic agents having *Lactobacillus acidophilus* and *Lactobacillus fermentum* as active ingredients, therefore the inventions set forth in claims 1 to 5 are disclosed in documents 1 to 5, and lack novelty.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT 03/08094

Claims 2 to 4, 6 to 8, 13 to 19

The inventions set forth in claims 2 to 4, 6 to 8, and 13 to 19 are not disclosed in documents 1 to 5 cited in the international search report, and would not be obvious to a person skilled in the art.